

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CHAIM LIPSITZ,

Plaintiff,

-against-

SHNEIOR HAREL and NATALIE ABALLI,

Defendants.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
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DATE FILED: 01/17/2024

24 Civ. 146 (AT)

ORDER

On January 16, 2024, Defendants filed a pre-motion letter requesting to file a motion to dismiss, ECF No. 5, their motion to dismiss the complaint, ECF No. 6, and a counterclaim against Plaintiff, ECF No. 7.

Defendants' letter does not comply with the Court's Individual Rules, which require a party seeking to move to dismiss to exchange letters with opposing counsel prior to filing a pre-motion letter with the Court. *See* Individual Rules IV(B); *see also* ECF Nos. 9–10 (confirming that this exchange did not occur). Defendants also filed their motion to dismiss without waiting for the Court to review and rule on their pre-motion letter. Therefore, Defendants' letter request and motion to dismiss are DENIED without prejudice to refile.

Regarding the counterclaim, counterclaims must be stated in a pleading. Fed. R. Civ. P. 13(a), (b), (e). A motion to dismiss is not a pleading, *see* Fed. R. Civ. P. 7(a) (listing pleadings), and "a party may not file a standalone counterclaim as its own pleading," *Russian School of Mathematics, Inc. v. Sinyavin*, No. 23 Civ. 8103, 2023 WL 6938294, at *4 (S.D.N.Y. Oct. 19, 2023). The counterclaim is, therefore, DISMISSED without prejudice to renewal.

By **January 31, 2024**, Defendant shall answer or otherwise respond to the complaint in accordance with the Court's Individual Rules.

The Clerk of Court is directed to terminate the motion at ECF No. 6.

SO ORDERED.

Dated: January 17, 2024
New York, New York



ANALISA TORRES
United States District Judge